UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,036	10/31/2003	Andrew John Bradfield	SOM920030008US1	1193

25259 7590 07/12/2010

IBM CORPORATION
3039 CORNWALLIS RD.
DEPT. T81 / B503, PO BOX 12195
RESEARCH TRIANGLE PARK, NC 27709

EXAMINER	
ABDUL-ALI, OMAR R	

ART UNIT	PAPER NUMBER
2173	

NOTIFICATION DATE	DELIVERY MODE
07/12/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

RSWIPLAW@us.ibm.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREW JOHN BRADFIELD, JAMES SARGENT LIPSCOMB, and OUN ZHOU

Appeal 2010-00-2864
Application 10/699,036
Technology Center 2100

Before JAMES D. THOMAS, JEAN R. HOMERE, and ST. JOHN COURTENAY III, *Administrative Patent Judges*.

COURTENAY, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

---

[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final decision rejecting claims 1 and 5-7. Claims 2-4 and 8-20 have been cancelled. We have jurisdiction over the appeal under 35 U.S.C. § 6(b).

We Affirm.

BACKGROUND

Appellants' invention relates generally to client/server technologies and their methods of communication. More particularly, the invention on appeal is directed to how Internet web browsers handle information from the server when rendering a request from a client. (Spec. 1).

Claim 1 is illustrative:

1. A method of processing a web page in a browser, the web page comprising a plurality of frames, the method comprising the steps of:

displaying a first frame while loading a second frame; and

preventing a user from interacting with the first frame until after the second frame is sufficiently loaded, said prevention occurring after a determination is made that the first frame depends on the second frame, otherwise, permitting the user to interact with the first frame regardless of whether the second frame is sufficiently loaded;

wherein the first frame is displayed until after the second frame is sufficiently loaded regardless of whether the user is permitted to interact with the first frame; and

wherein the preventing step further comprises instructing the user to wait to interact with the first frame until after the second frame is sufficiently loaded.

The Examiner relies on the following prior art references as evidence of unpatentability:

Sjostrom	US 6,971,107 B2	Nov. 29, 2005 (filed Mar. 22, 2001)
Hobbs	US 6,523,022 B1	Feb. 18, 2003

Appellants appeal the following rejection:

Claims 1 and 5-7 under 35 U.S.C. § 103(a) as unpatentable over Sjostrom and Hobbs.

APPELLANTS' CONTENTIONS

Appellants contend that Hobbs teaches away from the claimed invention. (App. Br. 4). Appellants also contend that "Sjostrom and Hobbs contain no teaching or suggestion directed to determining whether a first frame depends on the second frame, much less preventing or permitting user interaction with the first frame based on such a determination, as recited [in] claim 1." (App. Br. 5).

Regarding dependent claim 5, Appellants contend that the Examiner's citation of Sjostrom at column 31 is in error. (App. Br. 6). Assuming the Examiner intended to reference Hobbs at column 31, Appellants aver that "there is simply no teaching or suggestion directed to a technique in which a user is prevented from interacting with the first frame until after the second frame is fully loaded." (App. Br. 7).

ISSUES

Based upon our review of the administrative record, we have determined that the following issues are dispositive in this appeal:

1. Did the Examiner err by improperly combining the Sjostrom and Hobbs references under § 103?

2. Under § 103, did the Examiner err by finding that the cited combination of Sjostrom and Hobbs would have taught or suggested "determining whether a first frame depends on the second frame, [and] preventing or permitting user interaction with the first frame based on such a determination, as recited in claim 1?" (App. Br. 5).

3. Under § 103, did the Examiner err by finding that the cited combination of Sjostrom and Hobbs would have taught or suggested a technique in which a user is prevented from interacting with the first frame until after the second frame is fully loaded? (*See* dependent claim 5).

FACTUAL FINDINGS

1. Hobbs teaches that making a modal window appear in front of an applet would cause any buttons generated by the applet and appearing to the side of the window to freeze until the modal window is closed. (Col. 31, ll. 13-15).

Grouping of Claims

Appellants argue claims 1, 6, and 7 as a group (App. Br. 3 *et seq.*). We select representative claim 1 to decide the appeal for this group. *See* 37 C.F.R. § 41.37(c)(1)(vii).

We consider claim 5 separately *infra*.

ANALYSIS

Issue 1

Based upon our review of the record, we find unconvincing Appellants' argument that Hobbs "teaches away" from the claimed invention (App. Br. 4).[2]

In particular, we observe that Appellants ground their "teaching away" argument on Hobbs' teaching of a "semi-modal window" which, unlike a modal window, does not prevent activity in the background from taking place. (App. Br. 4). However, we find Appellants' argument is misplaced because the Examiner does not rely on Hobbs for its teaching of a semi-modal window. Rather, the Examiner relies on Hobbs' teaching of a modal window (i.e., second frame) which prevents the user from interacting with an underlying application window (first frame). (Ans. 4, 8; *see also* FF 1).

---

[2] "What the prior art teaches and whether it teaches toward or away from the claimed invention . . . is a determination of fact." *Para-Ordnance Mfg., Inc. v. SGS Importers Int'l, Inc.*, 73 F.3d 1085, 1088 (Fed. Cir. 1995).

Our reviewing court has determined that "[a]ll of the disclosures in a reference must be evaluated for what they fairly teach one of ordinary skill in the art." *In re Boe*, 355 F.2d 961, 965 (CCPA 1966)). "[I]n a section 103 inquiry, 'the fact that a specific [embodiment] is taught to be preferred is not controlling, since all disclosures of the prior art, including unpreferred embodiments, must be considered.'" *Merck & Co. v. Biocraft Labs., Inc.*, 874 F.2d 804, 807 (Fed. Cir. 1989) (quoting *In re Lamberti*, 545 F.2d 747, 750 (CCPA 1976)).

This reasoning is applicable here. Thus, we find Hobbs' teaching of a modal window (i.e., second frame) which prevents the user from interacting with an underlying application window (first frame) must be considered, even if it is an unpreferred embodiment. We particularly observe that Appellants have failed to present arguments which establish why the modal window relied on by the Examiner (Ans. 4, 8) "teaches away" from Appellants' claimed invention.[3] On this record, we are thus in accord with the Examiner's position that the portion of Hobbs' relied on (FF 1) does not "teach away" from Appellants' claimed invention. (*See* Ans. 8). Therefore, we find the Examiner did not err by improperly combining the Sjostrom and Hobbs references under § 103.

Issue 2

We also find unavailing Appellants' second contention that the cited combination of Sjostrom and Hobbs does not teach or suggest "determining

[3] Arguments not made are waived. *See* 37 C.F.R. § 41.37(c)(1)(vii). *Cf. In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991) ("It is not the function of this court to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art.")

whether a first frame depends on the second frame, [and] preventing or permitting user interaction with the first frame based on such a determination, as recited in claim 1." (App. Br. 5).

Appellants attempt to support their contention with a statement that "[i]ndeed, both references teach away by instead disclosing techniques in which user interaction with a frame is entirely unrelated to whether that frame depends on another frame." (App. Br. 5). However, Appellants fail to provide any specific citation to Sjostrom or Hobbs to provide evidentiary support for their statement. (*see* App. Br. 5-6).

Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value. *In re Geisler*, 116 F.3d 1465, 1470 (Fed. Cir. 1997); *see also In re De Blauwe*, 736 F.2d 699, 705 (Fed. Cir. 1984); 37 C.F.R. § 1.111(b); and *Ex parte Belinne*, No. 2009-004693, slip op. at 7-8 (BPAI Aug. 10, 2009) (informative), *available at* http://www.uspto.gov/web/offices/dcom/bpai/its/fd09004693.pdf.

This reasoning is applicable here. Moreover, we found Appellants' "teaching away" argument unpersuasive regarding Hobbs, as discussed *supra*. In addition, the Examiner includes specific findings and explanations regarding how the combination of Sjostrom and Hobbs would have taught or suggested the limitations argued by Appellants. (Ans. 9). However, Appellants have not filed a Reply Brief to address these findings and explanations. [4]

[4] "Silence implies assent." *Harper & Row Publishers, Inc. v. Nation Enters.*, 471 U.S. 539, 572 (1985).

Based upon our review of the record, we are in accord with the Examiner's findings as set forth on pages 8 and 9 of the Answer. Accordingly, we sustain the Examiner's §103 rejection of independent claim 1. Claims 1, 6, and 7, not argued separately, fall with representative claim 1. *See* 37 C.F.R. § 41.37(c)(vii).

Issue 3

Lastly, we also find unavailing Appellants' third contention that the cited combination of Sjostrom and Hobbs does not teach or suggest a technique in which a user is prevented from interacting with the first frame until after the second frame is fully loaded. (App. Br. 7; *see* claim 5).

At the outset, we find the Examiner's inadvertent reference to Sjostrom at column 31 to be harmless error, as Appellants acknowledge that there is no column 31 in Sjostrom. (App. Br. 6, last paragraph). Clearly, Appellants understood that the Examiner intended to reference column 31 in Hobbs. (*See* Appellants' discussion of Hobbs on page 7 of the Brief).[5]

In light of this awareness of Hobbs, Appellants aver that:

> assuming arguendo that one could analogize the applet and modal window [as taught by Hobbs] to the respective first and second frames recited in claim 1[], there is no teaching or suggestion that the modal window could not be closed until after the modal window is fully loaded. One skilled in the art will understand that there are numerous instances of browser windows which can be closed by a user prior to their being fully loaded; many pop-up blockers employ this very technique.

(App. Br. 7).[6]

---

[5] The Examiner acknowledges the typographical error on page 9 on the Answer.

[6] We observe that Appellants failed to include any supporting references listed in the "EVIDENCE APPENDIX" section of the Brief. *See Geisler*,

However, we find Appellants' argument is met by a stronger argument by the Examiner, as follows:

> The [A]ppellant has not presented any evidence that the modal window disclosed by Hobbs is not fully loaded at the time that it is addressed, nor does Hobbs teach a modal window that is not fully loaded. Rather Hobbs teaches a modal window that must be closed before any functions can be activated in the background applet, demonstrating the functionality of claim 1.

(Ans. 10).

Because the background window (first frame) is frozen (i.e., no user interaction is permitted) while Hobbs' modal window (second frame) is open (and fully loaded), we find user interaction with the first (background applet) window is prevented until after Hobbs' modal window is closed, this moment of closure occurring in time after the modal window (second frame) was previously open (and fully loaded). Thus, we agree with the Examiner that the scope of Appellants' claim 5 encompasses the teachings of Sjostrom as modified by Hobbs. Accordingly, we sustain the Examiner's § 103 rejection of claim 5.

---

116 F.3d at 1470 (Mere attorney arguments and conclusory statements that are unsupported by factual evidence are entitled to little probative value).

DECISION

We affirm the Examiners § 103 rejection of claims 1 and 5-7.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a). *See* 37 C.F.R. § 1.136(a)(1) (2009).

ORDER

AFFIRMED

Erc

IBM CORPORATION
3039 CORNWALLIS RD.
DEPT. T81 / B503, PO BOX 12195
RESEARCH TRIANGLE PARK, NC 27709